

NO. 48696-2-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

CAITLIN ALLRED
Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR LEWIS COUNTY

The Honorable James Lawler, Judge

BRIEF OF APPELLANT
CORRECTED

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A. ASSIGNMENT OF ERROR

The state failed to prove beyond a reasonable doubt that Allred possessed methamphetamine.

Issue Pertaining to Assignment of Error

Did the state fail to prove beyond a reasonable doubt that Allred possessed methamphetamine where the evidence established that she temporarily lived with her boyfriend who owned the trailer and admitted to possessing the methamphetamine?

B. STATEMENT OF THE CASE

Caitlin Allred was charged with delivery of substance in lieu of controlled substance, robbery in the second degree and possession of methamphetamine. CP 13-15. Ms. Allred was acquitted of the robbery charge and convicted of delivery of substance in lieu of controlled substance and possession of methamphetamine. CP 43-45, 47-58.

After a failed attempt at a controlled buy with confidential informant Cassandra Sines, the police obtained a warrant to search Jack Daniels' trailer. RP 151-54. The trailer is a small pull-behind type with 6-7 feet between the bedroom and living room. RP 134, 212. When the police announced their presence, four people exited the little trailer: Jack Daniels, Wade McGinnis, Trent (unknown) and Caitlin Allred. RP 210, 214. After all four exited the trailer, the police searched and found methamphetamine residue in a baggie in a pull out drawer at the back of the trailer. RP 174.

A forensic scientist determined that the residue in one of the baggies contained methamphetamine. RP 190. There were no fingerprints associating Ms. Allred with the methamphetamine.

Mr. Daniels explained that prior to the search, that Ms. Allred was in the bedroom talking to Trent. RP 214. Mr. Daniels, the owner of the trailer pleaded guilty to possession of methamphetamine and stated that his then girlfriend, Ms. Allred, would come and go insofar as her living arrangement at the trailer during that time. RP 209.

This timely appeal follows. CP 60.

C. ARGUMENT

THE STATE FAILED TO PROVE BEYOND A
REASONABLE DOUBT THAT ALLRED
POSSESSED METHAMPHETAMINE.

As charged in this case, to establish guilt under RCW 69.50.4013(1) and 69.50.206(d)(2), unlawful possession of methamphetamine, including its salts and isomers, the state had to Ms. Allred possessed methamphetamine or its salts and isomers without a valid prescription. Id.

In a criminal prosecution, the State must prove beyond a reasonable doubt, every fact necessary to constitute the crime with which a defendant is charged. *State v. Sundberg*, 185 Wn.2d 147, 152, 370 P.3d 1

(2016) citing, *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970)(quotations omitted)).

""[T]o "possess" means to have actual control, care and management of, and not a passing control, fleeting and shadowy in its nature". *State v. Staley*, 123 Wn.2d 794, 801, 872 P.2d 502 (1994), quoting, *United States v. Landry*, 257 F.2d 425, 431 (7th Cir. 1958).

Possession may be either actual or constructive. *State v. Callahan*, 77 Wn.2d 27, 29, 459 P.2d 400 (1969). Actual possession means that the goods are in the personal custody of the person charged with possession: whereas, constructive possession means that the goods are not in actual, physical possession, but that the person charged with possession has dominion and control over the goods. *Callahan*, 77 Wn.2d at 29. The question of dominion and control is considered under totality of the circumstances, which must provide substantial evidence for a fact finder to reasonably infer that the defendant had dominion and control. *State v. Cote*, 123 Wn.App. 546, 549, 96 P.3d 410 (2004).

In *Callahan*, a case involving possession of narcotics, Mr. Callahan did not own the houseboat he was on, but he was observed in close proximity to the drugs and he admitted handling the drugs earlier that day. *Callahan*, 77 Wn.2d at 29-31. Mr. Callahan had been on the houseboat for two or three days and he had with him two books, two guns, and a set of

broken scales. *Callahan*, 77 Wn.2d at 31. The owner of the boat testified that the drugs were his. The State Supreme Court held this was insufficient evidence to find Mr. Callahan in constructive possession of the illegal drugs. *Id.*

The Court reasoned that staying on the boat for a few days combined with handling the drugs found near the defendant did not establish dominion and control without evidence that Callahan paid rent, and the owner said the drugs were his. *Id.*

Here, Ms. Allred sporadically stayed at the trailer, there was no evidence that she paid rent and Mr. Daniels admitted the drugs were his. These facts make *Callahan* indistinguishable from this case, other than Ms. Allred did not handle the methamphetamine and there were three other people in the small trailer who had equal access to the methamphetamine. Under *Callahan*, the state failed to prove Ms. Allred possessed the methamphetamine. *Callahan*, 77 Wn.2d at 31

In *State v. Spruell*, 57 Wn.App. 383, 384, 788 P.2d 21 (1990), another case that supports Ms. Allred, the police found *Spruell* sitting at a table with drugs and drug paraphernalia. The Court refused to find constructive possession even though Mr. Hill's fingerprints were on a plate containing cocaine residue *Spruell*, 57 Wn.App at 388-89. Similarly, in *Cote*, the Court found the evidence insufficient to establish dominion

and control where a passenger in a vehicle left fingerprints on a jar containing contraband. *Cote*, 123 Wn.App. at 550. These cases are controlling.

Here, when the police entered the small trailer, Mr. Daniels was present with two other men and Ms. Allred. RP 134, 210-12. Mr. Daniel's testified that at the time of the search, Ms. Allred would "come and go" from the trailer. RP 209. Ms. Allred did not live at the trailer full time. *Id.* The police found methamphetamine residue in the back of the little trailer where all four occupants had access, but only Mr. Daniel's lived there full time. RP 174, 209. Mr. Daniels admitted to possessing the methamphetamine and pleaded guilty to a possession of methamphetamine charge. RP 221.

The evidence in this case is less persuasive than the evidence held insufficient in *Callahan*, *Spruell* and *Cote*. Accordingly, the state did not prove constructive possession. Rather the state established mere proximity, which is insufficient to establish possession. The possession of methamphetamine charge must be reversed and dismissed with prejudice. *Callahan*, 77 Wn.2d at 32.

D. CONCLUSION

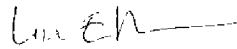
Caitlin Allred respectfully requests this Court reverse her conviction for possession of methamphetamine and dismiss with prejudice due to the

state's failure to present evidence beyond a reasonable doubt that she possessed methamphetamine

DATED this 23rd day of September 2016.

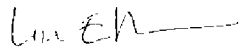
Respectfully submitted

LAW OFFICES OF LISE ELLNER



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I, Lise Ellner, a person over the age of 18 years of age, served the Lewis County Prosecutor appeals@lewiscountywa.gov and Caitlin Allred DOC# 389505 Washington Corrections Center for Women 9601Bujacich Rd. NW Gig Harbor, WA 98332-8300, on September 23, 2016. Service was made electronically to the prosecutor and to Ms. Allred by depositing in the mails of the United States of America, properly stamped and addressed.



Signature

ELLNER LAW OFFICE

September 23, 2016 - 12:36 PM

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